

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

IN THE MATTER OF:

**PROPOSED AMENDMENTS TO
STANDARDS FOR INTERSTATE AND
INTRASTATE SURFACE WATERS,
20.6.4 NMAC**

No. WQCC 20-51 (R)

**TRIAD NATIONAL SECURITY, LLC
AND THE UNITED STATES DEPARTMENT OF ENERGY'S
NOTICE OF ERRATA**

Triad National Security, LLC (“Triad”) and the United States Department of Energy, National Nuclear Security Administration (“DOE”) (collectively “LANL”), submits this Notice of Errata to its Closing Argument, filed in the above captioned docket on September 24, 2021. Specifically, LANL requests that Exhibit B (Statement of Reasons) be corrected to include Paragraphs 197 through 206 in the attached document- LANL’s proposed statement of reasons pertaining to its amendment to 20.6.4.10(F)(1)(d) NMAC– Site Specific Criteria that were inadvertently omitted from its filed document. LANL consulted the other parties regarding this proposed correction and understands that the filing of the correction is unopposed.

Respectfully submitted,

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VII. FORMATTING & GRAMMATICAL

A. 20.6.4.10(F)(1)(d) NMAC– Site Specific Criteria (Fulton)

197. LANL initially proposed to amend 20.6.4.10(F)(1)(d) to add the following language: “unless it is demonstrated such uses would be protected at natural background concentrations.” **LANL Ex. 1** (Proposed Changes). LANL witness Mr. Fulton explained that the rationale for the suggested change is:

to recognize that there may be instances where setting criteria to natural background concentrations would still protect primary or secondary contact, or human health-organism only uses. For example, a waterbody may be fishless due to low flow or other natural conditions or may support only a limited population of fish. In such cases, modifying human health criteria based on background conditions and attainable levels of exposure could still be protective of such uses.”

LANL Ex. 6 at 13 (Fulton Direct).

198. In rebuttal, to provide greater clarity and consistency with federal regulations (40 C.F.R. § 131.10), LANL modified its proposal and recommended the following language be added to 20.6.4.10(F)(1)(d) NMAC “unless it is demonstrated such uses would be protected at ~~natural~~ background concentrations or such uses are not attainable in accordance with 20.6.4.15 NMAC. **LANL Ex. 62** at 12-13 (Fulton Rebuttal).

199. NMED opposed LANL’s proposal on the grounds that the language is not sufficiently protective of human health. Hrg. Tr., Vol. III, 945-946 (Fullam).

200. At hearing, Mr. Fulton offered surrebuttal testimony responding to NMED’s concern. Hrg. Tr., Vol. III, 1020-1024 (Fulton). Mr. Fulton clarified that LANL’s proposal “would require these human-health uses to be protected” unless the uses are not attainable pursuant to 20.6.4.15 NMAC and provided clarification under what conditions these uses could still be protected. Hrg. Tr., Vol. III, 1020:18-1021:4 (Fulton). Mr. Fulton then explained that “the basis

for [LANL's] proposed amendment was to recognize exposure and bioaccumulation factors may vary on a local basis compared to the default parameters used in EPA's criteria. I did not suggest that toxicity factors be modified to reflect local conditions." Hrg. Tr., Vol. III, 1021:5-9 (Fulton).

201. Mr. Fulton further testified that:

In their guidance for deriving Ambient Water Quality Criteria (AWQC) for the protection of human health, EPA encourages States and authorized Tribes to develop or modify water quality criteria to appropriately reflect local fish consumption rates or fish bioaccumulation factors (EPA 2000, 2009). [This EPA] guidance on developing human-health criteria is actually referenced in 20.6.4.10(D)(4)(d) NMAC. If local fish consumption rates or fish bioaccumulation factors differ from EPA's default values, it is appropriate, defensible, and protective, to modify EPA's 304(a) criteria to reflect local conditions, consistent with EPA guidance. Such modification may result in modified criteria that are greater than natural background concentrations and, therefore, would be protective of the human-health uses.

Hrg. Tr., Vol. III, 1021:10-1022:1 (Fulton).

202. Mr. Fulton therefore recommended that, "rather than eliminating a human health use based on natural background concentrations or rejecting an EPA 304(a) criteria because it may be impractical based on natural background concentration, I think it would be prudent to address whether such uses would be protected when site-specific factors are considered." Hrg. Tr., Vol. III, 1022:2-8 (Fulton).

203. Referring back to rebuttal, Mr. Fulton further clarified that "the UAA procedure is not restricted to aquatic life uses and aquatic life criteria. It also applies to human health uses and criteria. Yet, the current language in 20.6.10(g) states human health criteria cannot be modified based on natural background." Mr. Fulton then reiterated that "this could be interpreted to mean that associated human health uses also cannot be modified based on natural background." Hrg. Tr., Vol. III, 1022 (Fulton).

204. For the reasons identified by Mr. Fulton, LANL revised its proposed amendments to 20.6.4.10(F) as follows:

“Domestic water supply, primary or secondary contact, or human health-organism only criteria shall not be modified based on natural background, unless the WQCC determines such modification is appropriate on a site-specific basis.”

Hrg. Tr., Vol. III, 1023-1024 (Fulton).

205. Mr. Fulton clarified that “such demonstration, if conducted by a third party, would require either a Use Attainability Analysis in accordance with 20.6.4.15 NMAC or the development of site-specific criteria in accordance with 20.6.4.10(D)(1) NMAC and that these demonstrations would be subject to review from the Department and public, and ultimately a decision by the WQCC.” Hrg. Tr., Vol. III, 1024 (Fulton).

206. The Commission finds that the testimony and recommendations of LANL’s witness Fulton are credible and that the weight of evidence supports LANL’s proposed amendments as consistent with federal regulation and serving the interests of transparency to the Commission and regulated, interested parties. The amendments to 20.6.4.10(F) are therefore adopted.

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2021, a true and correct copy of the foregoing *Triad National Security, LLC and United States Department of Energy's Notice of Errata* was served via electronic mail to the following:

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